

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

INTERNATIONAL STUDENTS AND SCHOLARS OFFICE

To: Executive Vice President for Health and Biomedical Sciences, Deans, Directors and Department Chairs

From: Robert Locke
Associate Provost and Director
International Students and Scholars Office

Cc: John Coatsworth, Provost
Stephen Rittenberg, Vice Provost

Date: January 3, 2013

Due to changes in the Department of Labor (DOL) regulations on part-time H-1B workers, I am writing to inform you that effective immediately Columbia University, through the International Students and Scholars Office (ISSO), is no longer filing for H-1B status for *part-time* positions. Please note that these regulatory changes only affect part-time workers and that the ISSO will continue to file for H-1Bs for qualified full-time faculty and research positions.

After considerable review by the Provost's Office, it was determined that the DOL regulatory requirements for part-time positions made compliance extremely difficult and, therefore, posed potential risk for the University. Notably, Columbia is not alone among its peer institutions in making this decision; these regulatory changes have similarly led many universities across the country to cease their H-1B sponsorship of part-time faculty and research positions.

Specifically, the DOL regulations require the employer to keep accurate records of hours worked each day and each week for all part-time H-1B employees, regardless of whether or not the part-time employee is paid a fixed salary and regardless of whether or not the employer keeps such hourly records for its other part-time salaried employees. An employer is responsible for paying the required wage to the H-1B employee at all times during the period listed on the Labor Condition Application (LCA) which is filed as part of the H-1B process that involves both the DOL and the US Citizenship and Immigration Services (USCIS). If the LCA carries a designation of part-time employment, the employer must pay the employee for the time actually worked, but no less than the number of hours per week indicated on the USCIS petition. So the difficulty of tracking all hours every day and every week for a part-time employee whose hours are not normally tracked through a punch-clock or other central payroll hourly wage system, and of making additional payments when necessary, is extremely burdensome for the academic department, is virtually impossible for the ISSO to verify, and thus, the whole process is rife with opportunities for inadvertent non-compliance errors.

Increasingly, the DOL and Department of Homeland Security (DHS) have focused a great deal of attention on employers' adherence to the complex labor requirements of the H-1B worker status. The University sees frequent unannounced site inspections by DHS investigators looking for any infractions

or deviations from the H-1B requirements and/or stated work conditions. The DHS and DOL penalties for violations range from fines and the payment of back wages to criminal prosecutions and the removal of an employer's ability to employ H-1B workers. None of these would be welcomed, but the loss of our ability to bring in full-time faculty and researchers on the H-1B could be disastrous. Each year, the University has over 750 full-time permanent and limited term faculty in H-1B status obtained through the ISSO and the H-1B is still the main immigration status used for tenure-track appointments for foreign faculty members. The H-1B option for a variety of full-time faculty and researcher appointments is vital to the University and therefore cannot be jeopardized by the risks posed by the federal requirements for part-time H-1B workers.

While there have only been a very few part-time H-1B workers at Columbia University in the past, I bring this issue and policy to your attention to aid you in future recruitment efforts, in case the question of a part-time H-1B should arise. For example, if you were considering an adjunct professor to teach a course and the candidate was currently on an H-1B as a full-time worker elsewhere, Columbia would not file for a part-time concurrent H-1B status to employ that individual.

Please also note that the ISSO will continue to bring to the University each year many part-time researchers and faculty for short-term or limited appointments utilizing the J-1 Exchange Visitor status. Hopefully, through this option we will still be able to meet your part-time faculty needs.